

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

In the Matter of

DuFief Homes Association, Inc.

Complainant

v.

Nicoletta Sacchi and
Leszek Karowiec

Respondents

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Case # 589- G
March 29, 2006

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearings on September 17, 2003, December 8, 2004, and June 15, 2005, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the duly appointed Hearing Panel, having considered the testimony and evidence of record, finds, determines, and orders as follows:

SUBSTANTIVE AND PROCEDURAL BACKGROUND

The dispute

Case 589-G is a dispute in which the DuFief Homes Association ("DuFief") asserts that Dr. Sacchi and Mr. Karowiec ("Respondents"¹) have changed the color of window trim, front doors, and a garage door on their home in the DuFief community without obtaining approval from DuFief's Architectural Review Committee, as required by the DuFief Declaration of Covenants.

DuFief filed complaint # 589-G against Dr. Sacchi and Mr. Karowiec with the Commission on July 16, 2002. By a Notice of Violation via letter dated July 12, 2001 DuFief

¹ Respondent Dr. Sacchi has noted to the Commission that she is the sole owner of the property that is the subject of this dispute. The initial response filed by Respondents included Mr. Karowiec as a Respondent, although it has been clarified that he is a resident of the property, but not an owner. Mr. Karowiec was present for the hearings on this matter but did not present testimony. While the Commission's jurisdiction extends in certain circumstances to residents of a property, in this dispute, which involves physical changes to a property, which a property owner, not a property resident, would have authority to make, Dr. Sacchi is the appropriate party to be recognized by the Commission. Therefore, in the remainder of this Decision and Order, "Respondent" refers only to Dr. Sacchi.

had ordered the Respondents to re-paint window trim, front doors, and a garage door because they had been installed in a white color, for which the prior written approval of the Board of Directors or the ARC had not been obtained as required by Article VI, Section 7 of the DuFief Homes Association Declaration of Covenants, Conditions, and Restrictions. Article VI, Section 7, provides that

7. No person shall paint the exterior of any building a color different than the original of said building without the proposed color having been approved by the Board of Directors of the Association, or by an Architectural Control Committee, approved by the Board.

In her response, Dr. Sacchi contended that DuFief's enforcement action was barred by laches, waiver, and a statute of limitations, that the guidelines upon which DuFief based its actions had not been properly adopted, and that DuFief had selectively enforced its covenants against her.

DuFief asks the Commission to uphold its order to paint the front doors, garage door, and windows, to order the Respondent to submit an application for approval of the work, and to order that the work be completed in a reasonable timeframe.

Dr. Sacchi asks the Commission to permit her to retain the white features of her home, to require DuFief to update its resale documents with a statement that the white features of her home are permitted, to "grandfather" white features of properties in DuFief that existed before October 21, 2002, and to award her attorney's fees incurred because of DuFief's selective enforcement of its covenants.

The complaint was not resolved through mediation, and the dispute was presented to the Commission on Common Ownership Communities, which voted that the dispute involved matters within the Commission's jurisdiction, and scheduled the dispute for hearing.

Procedural History

After pre-hearing conferences and discovery, the matter came before the Hearing Panel ("Panel") for the first of three hearings on September 17, 2003. At the first hearing, the Panel consisted of Commissioner Michael Maloney, Commissioner Russell Subin, and Panel Chair Christopher Hitchens. No testimony was taken at that hearing, as the Respondent moved for summary judgment on the grounds that DuFief was barred from bringing its action to enforce its covenants on the theory of a statute of limitation. The Panel deferred ruling on the motion pending submission of memoranda from the parties setting forth their positions on the applicability of the statute of limitations cited by Respondents. The Panel also continued the hearing, which was subsequently re-scheduled for June 16, 2004.

As the basis for summary judgment, the Respondents asserted that the color changes made by the Respondents occurred in 1992, 1994, and 1996. DuFief issued the Notice of Violation which became the basis of this dispute in July 2001. Respondents asserted that Maryland's general three-year statute of limitations set forth in the Courts and Judicial Proceedings Article, at Section 5-101 precluded DuFief from bringing its action to enforce the covenants.

Alternatively, the Respondent asserted that the common law doctrine of laches precluded DuFief's enforcement action.

In its memorandum, Complainant argued that that the three year statute of limitations did not apply to a covenant enforcement action, which is in essence an equitable action, and that the appropriate statute of limitations is the twelve year statute of limitations set forth in the Courts and Judicial Proceedings Article, at section 5-102, relating to "specialties," asserting that the DuFief Covenants constitute a contract under seal.

Neither argument was supported by Maryland case law relating to covenant enforcement, but there are several Maryland decisions in which the Courts have analyzed the passage of time between a property owner's action and an enforcement action, in terms of whether the covenant has been abandoned and whether the doctrine of laches warranted barring enforcement of the covenant. These cases include *Chevy Chase Village v. Jaggers*, 261 Md 309 (1971), *Kirkley v. Seipelt*, 212 Md. 127 (1957), *Lindner v. Woytowitz*, 37 Md. App. 652 (1977), and *Liu v. Dunnigan*, 25 Md. App.178 (1975).

Therefore, the Panel determined that there is no Maryland statute of limitations which precluded DuFief from taking action to enforce its covenants and denied the motion for summary judgment. Although laches was raised as a defense in the Respondents' memorandum, at that time in the proceeding, there had been insufficient evidence submitted to the Panel on that issue, and the Panel did not make a determination on the abandonment or laches issues in ruling on the motion for summary judgment.

The hearing scheduled for June 16, 2004 was continued and rescheduled at the Respondent's request, to December 8, 2004. By the second hearing on December 8, 2004 Commissioner Russell Subin's term had expired, and Commissioner Charles Fleischer was appointed to replace him.

A third hearing was held on June 15, 2005. Commissioner Michael Maloney's term had expired at that time. Since there had been significant testimony presented at the hearing on December 8 2004, in the interest of continuity and efficiency, the Commission suggested that the case proceed to its third hearing before only Commissioner Fleischer and Panel Chair Hitchens, to avoid introducing a new commissioner to a case where several proceedings had occurred, and substantial evidence had already been presented. At the beginning of the hearing on June 15, 2005 the parties waived any objections to proceeding before Commissioner Fleischer and Panel Chair Hitchens.

Following the third hearing on June 15, 2005, the Complainant submitted a written closing argument on July 29, 2005 and the Respondent submitted her written closing argument on August 2, 2005.

SUMMARY OF TESTIMONY AND EVIDENCE

Complainant's Case

The Complainant presented the testimony of four witnesses: Mr. Jim Jordan, Mr. Murray Tuel, Mr. Jim Emr, and Mr. Tom Kimmel.

Mr. Jordan

Mr. Jordan testified that he had owned a house and lived in the DuFief community since, 1981, that during the time periods of 1988-1994 and 2001-2003, he had been a member of the Architectural Review Committee (ARC) and the Board of Directors for the Association. Mr. Jordan testified that the Association has established a process for seeking approval of architectural modifications, including changes in color of materials, and for appealing decisions of the ARC. He testified that Dr. Sacchi had not obtained approval from the ARC for installing the windows, front doors, and garage door for which she was cited, and that she had not followed the process for obtaining approval. He testified that she had appealed the notice of violation she received from the ARC to the Board of Directors, and that the Board of Directors denied her appeal.

Mr. Jordan testified that over the years, the Architectural Review Committees had not approved requests to paint features white or install white materials. He testified that the Respondent had applied for and received permission to paint her house in 1986, and he introduced Complainant's Exhibit #14, which was an application for approval to paint Dr. Sacchi's home.

Mr. Jordan testified that he had interacted personally with Dr. Sacchi to explain the rationale for the notice of violation and the techniques that might be used as remedies for the violations.

Mr. Jordan testified that during the period of 2001- 2003 the Association had issued 58 notices of violation regarding architectural conditions of properties in the community, and that the Association had filed five complaints with the Montgomery County Commission on Common Ownership Communities against owners who had not complied with the notices of violation, which addressed matters including failure to obtain approval of a color of material or paint used.

Mr. Jordan testified that in October 2001, although the color white had never been approved by an Architectural Review Commission, DuFief adopted amendments to its Architectural Guidelines to state that the color "'white' will not be approved for use with the DuFief community on any part of a home, fence shed, or any other existing structure." He testified that the reason for the amendment was that notwithstanding the covenant requiring ARC

approval for color changes, owners had made such changes without permission over the years, and the Association wanted to provide notice to the community that white features were not approved.

Mr. Jordan testified that when the ARC issued its notice of violation to Dr. Sacchi, he did not know that the windows and doors had been installed up to ten years earlier.

Mr. Tuel

Mr. Tuel testified that he is an architect, that he was the chairman of DuFief's ARC for 2004 and 2005, and that he had served on the ARC since 1992. He testified that he had lived in DuFief since 1976. He testified that in 2001, DuFief established a benchmark photographic record of all 306 homes in the community to document the condition and appearance of the homes and to support analysis of applications for architectural changes.

Mr. Tuel testified that beginning in 1992, and continuing through the present, the ARC reviewed architectural change applications monthly. He testified that in deciding on a request for a color change, the ARC reviewed the actual color itself, and did not rely on the commercial designation of a color, or require a commercial designation to match a name previously approved or used in the community.

Mr. Emr

Mr. Emr testified that he is an architect, and as a Board member and ARC member from the mid-1980's through the early 1990's, he was familiar with the history of the development of the "palette" of colors that the ARC considered when evaluating requests for color changes. He testified that the original stains used by the developer of the community became less available in the years following initial sales. He testified that the standard used to reevaluate a request for a change was whether the color requested was in harmony with the colors of other homes and features in the community. He testified about and presented to the hearing panel, a display (referred to as the "color palette") of samples of colors approved for use in the community. He testified that the palette, which is characterized by the popular phrase "earth tones," had been developed in 1988 and modified over the years. He testified that the ARC did not enumerate colors that were not approved, but instead reviewed a requested color in comparison to other colors that had been approved. Mr. Emr testified that beginning in 1988 or 1989, the ARC approved a color with the commercial designation "Navajo White" for use on trim components of homes, such as accent panels, entry doors, and garage doors. He testified that the color on the components on Dr. Sacchi's home for which she received the notice of violation, was not Navajo White, and that the color was lighter in tone than Navajo White. He testified that the ARC had not approved any color requested that was lighter in tone than Navajo White.

Mr. Kimmel

Mr. Kimmel testified that he knew of three methods by which the white color of the window trim on Dr. Sacchi's home could be altered or covered. He explained that these methods

were: (1) to paint the vinyl portion of the window rim with oil based primer followed by a dark bronze paint; (2) to attach aluminum coil covering; and (3) to attach a wooden frame cover.

Testimony from the Complainant's witnesses was supported by numerous documents and photographs admitted into the record, including the DuFief Architectural Guidelines, dated October 25, 2001, a color chart used by the ARC, the Association's Application form for requesting architectural changes, the ARC's reports for 2002 and 2003, photographs from the 2001 benchmark documentation described by Mr. Tuel, photographs of the windows, front doors, and garage door on Dr. Sacchi's home, the Notice of Violation sent to the Respondent, an excerpt from *Washingtonian* Magazine describing the appearance of homes in the DuFief community, and a copy of a warranty for the windows on Dr. Sacchi's home.

Respondent's Case

The Respondent, Dr. Nicoletta Sacchi, presented the testimony of Mr. Kevin McGratten, Dr. David Greene, and herself.²

Mr. McGratten

Mr. McGratten testified that he was a member of the DuFief Board of Directors when Dr. Sacchi appealed the Notice of Violation issued to her by the ARC, and that he voted to grant her appeal. He testified that his rationale for granting the appeal was that in his opinion, the colors chosen by owners for their homes are a matter of personal choice.

Mr. Green

Mr. Green testified that he purchased a home in DuFief previously owned by Murray Gould, a president of the Board of Directors at one time. Mr. Green testified that when he purchased the home, portions of the structure and windows were white in color. Mr. Green testified that he received a notice of violation from the ARC for those items and that he subsequently submitted an application and received approval to paint over the white portions of the house and install material to cover the white window frames. He testified that the steps he took resolved the notice of violation he had received.

² Initially, Dr. Sacchi was represented in this dispute by Jeffrey Van Grack, Esquire. Mr. Van Grack represented Dr. Sacchi through the discovery and pre-hearing conferences phases of the dispute, represented her at the hearing on September 17, 2003, and submitted a memorandum on her behalf to support a motion for summary judgment made at the September 17, 2003 hearing. He withdrew his appearance by letter dated December 13, 2003. Dr. Sacchi represented herself at the hearings on December 8, 2004 and June 15, 2005. On June 15, 2005, the hearing panel permitted Dr. Sacchi's testimony to be accompanied by her display of documents and photographs projected for viewing on a wall in the hearing room, using a computer and the presentation software application "PowerPoint." Some of the images displayed through PowerPoint, that were also discrete physical documents were admitted into the administrative record of this dispute. Images that were not submitted as exhibits, or not accepted, have not been included in the record.

Dr. Sacchi

Dr. Sacchi testified that she had purchased her home in DuFief in 1986. She testified that she had not signed an application submitted to the Association in 1986 to change the color of her house, and that she was unaware of the requirement to obtain approval of the color of windows and doors that she installed in 1992, 1994, and 1996. Dr. Sacchi opined that the white color of these features of her home did not detract from the pleasant appearance of her home or other homes in DuFief, and that the lack of maintenance and failure to paint other homes in DuFief was comparatively a more significant problem. She presented photographs of unidentified properties in the community to support her testimony that other properties were not in compliance and that the violations at her property had been treated differently from other properties in the community.

Dr. Sacchi testified that she was the only DuFief resident whose notice of violation for failing to apply for and receive approval before installing white features had resulted in a hearing before the Commission on Common Ownership Communities. She testified further that she was individually the target of selective enforcement of the approval requirement in the covenant by DuFief, and that her interactions with Mr. Jim Jordan on this matter were unpleasant to her.

She testified that in her opinion, because the DuFief Architectural Guidelines were not amended to specifically prohibit use of white until 2002, her installation of white doors and windows before that time did not require approval and should not be required to be changed.

Dr. Sacchi testified that painting the windows and doors would negate the manufacturers' warranties for them. She also testified that with regard to the remedy of painting the features to change their color, as a research scientist, she was concerned that the health risks of paint vapors to the residents of her home outweighed the minimal benefit that changing the color of the features would provide to the community.

Dr. Sacchi testified that another DuFief community member, Mr. James Henry, had obtained approval for white windows from DuFief. She presented a statement from Mr. Henry, which she characterized as an "affidavit," and which was accepted into the record, to support her contention.

Dr. Sacchi testified that she had spent \$15, 449.00 on legal services related to this dispute.

Other exhibits in the record included the Commission's file on this dispute, including the DuFief governing documents, and the parties' responses to interrogatories and requests for production of documents.

FINDINGS OF FACT

1. The Respondent Dr. Nicoletta Sacchi is the owner of property known as 11629 Happy Choice Lane, Gaithersburg, Maryland (hereinafter referred to as the "Property.")

2. The "Property" is subject to a Declaration of Covenants (hereinafter referred to as the "Covenants") recorded on March 2, 1972 at Liber 4197, folio 514, among the land records for Montgomery County, Maryland, which provides at Article V, in pertinent part as follows:

No building, fence, wall, antenna, swimming pool or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specification showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. . . .

and at Article VI, Section 7 that

7. No person shall paint the exterior of any building a color different than the original of said building without the proposed color having been approved by the Board of Directors of the Association, or by an Architectural Control Committee, approved by the Board.

3. Respondent installed new windows at the Property in 1992, a new garage door in 1994, and new entrance doors in 1996.

4. Respondent did not obtain approval from the Architectural Review Committee to install the windows, garage door or entrance door.

5. Complainant notified Respondent that the installation of the windows, garage door and entrance doors without approval was a violation of the Covenants by Notice of Violation dated July 12, 2001, and that the colors of the windows, garage door, and entrance doors were not approved.

6. Complainant denied Respondent's appeal of the Notice of Violation by letter dated October 27, 2001 and directed her to paint the front doors, garage door, and windows by May 31, 2002, and requested that the Respondent submit an application for approval of the work.

7. Respondent submitted an application to Complainant for approval of architectural changes, including approval to paint her home, in 1986.

8. Over the years, the DuFief Architectural Review Committee has consistently used an

established color palette for comparison in reviewing all requests for color changes on homes, trim, doors, and windows, which includes a color known as "Navajo White," which is the lightest tone the Architectural Review Committee has ever approved for homes in DuFief.

9. The color palette reflects that white was not a color of any original homes or features in DuFief.

10. The colors of the windows, garage door, and entrance doors on the Property are lighter than Navajo White

11. The Home Star warranty for the windows admitted into the record contains the statements "This warranty is limited to the furnishing of repainted, repaired or replacement parts or components . . ." and "This warranty will not apply if the windows are painted, varnished, or coated with any substance."

12. The "Maintenance and Painting Instructions for Pre-Painted Doors" issued by the Wayne Dalton Company and admitted into the record contain instructions for cleaning and painting the company's doors.

13. The existing white appearance of the windows, garage door, and entrance door can be altered by painting or covering.

14. Respondent's costs for legal services related to this dispute are \$15, 449.00

15. During the years 2001-2003 DuFief issued 58 notices of architectural violations in the community and filed five disputes regarding against DuFief owners alleging architectural violations in the Montgomery County Commission on Common Ownership Communities.

16. The Association amended its Architectural Guidelines at Section II(2)(b) on October 25, 2001 (deposited in the Homeowners Association Depository on October 21, 2002) to include the statement that the " color 'white' will not be approved for use within the DuFief community on part of a home, fence, shed, or any other exterior structure."

CONCLUSIONS OF LAW & DISCUSSION

1. The Respondent has violated Article V and Article VI, Section 7 of the Covenants.

The panel concludes that the installation of windows, garage door, and entrance doors by the Respondent as described herein violates Article V because it was done without approval, and also that the color of these items was changed from the original color without obtaining approval, in violation of Article VI, Section 7.

The Panel summarizes the Respondent's approach, philosophy, and theory of defense in this matter as follows: Dr. Sacchi fundamentally believes she should be excused from complying with the covenants on the basis of ignorance of the covenants and approval requirements when she made the changes. Alternatively, she contests the authority of the association to regulate colors and she argues that as the property owner, her determination of aesthetics of the colors is correct and should override the Board's. This is an argument that notwithstanding her technical failure to submit an application, the Complainant has improperly interpreted the covenants to reject the color she has requested approval for in her "application by action."

Based on the application submitted for repainting the Property to the Association in 1986, the Panel rejects Dr. Sacchi's assertion that she was unaware of the covenants and the requirements for obtaining approval. The Panel also rejects the argument that because the Association did not amend its architectural guidelines to specifically identify white as a color not approved for the community until October 25, 2001, the Respondent had not notice that white was not acceptable when she installed the windows, garage door, and entrance doors. The non-approval of white may not have been expressed in writing until 2001, but it was the clear practice of the ARC not to approve white throughout the community's first two decades.

Moreover, Dr. Sacchi's view of a homeowner's decision-making authority is fundamentally at odds with, and inconsistent with the intention of a community to vest authority regarding covenant matters with an architectural review committee in a community governed by architectural covenants. Her view is not supported by any authority on the interpretation of covenants or the exercise of homeowners' association enforcement of covenants.

The Panel concludes that the Association's directions to the Respondent in its letter dated October 27, 2001 are based on its reasonable interpretation of the DuFief Declaration of Covenants, because it has reviewed her request to change the color using criteria meeting the standard for upholding an Association's architectural covenant interpretation set forth in *Kirkley v. Seipelt*, 212 Md. 127 (1957).

Kirkley v. Seipelt explains that covenants are in essence a contract, which the parties enter voluntarily, and if the intention of the parties is clear and the restrictions in the covenants are reasonable, they must be upheld. *Kirkley, supra*, at 133. The standard in evaluating a Board of Directors' denial to approve a proposal subject to an architectural covenant, is that "... any refusal to approve the external design or location ... would have to be based on a reason that bears some relation to the other buildings or general plan of development; and this refusal would have to be a reasonable determination made in good faith, and not high-handed, whimsical or captious in manner." *Kirkley, id.*

Testimony from the Complainant was clear that requests to change color are analyzed in terms of a uniform color palette used throughout the community with a goal of maintaining harmony and continuity of colors used over the years. These decisions were made with the expertise of architects experienced and trained in such issues. The testimony was that the ARC carefully evaluated colors, which allowed for flexibility and fairness; a new color could be

approved if it was within the range of colors on the color palette. The panel concludes that the Association's determination that the color of the Respondent's windows, garage doors, and entrance doors was not acceptable in the context of the other colors used in the community is a reasonable determination, meeting the standard set forth in *Kirkley*. Respondent's request for DuFief to issue a document "grandfathering" the white features of the Property in its resale documents is therefore inappropriate.

2. The Covenants have not been enforced selectively against the Respondent.

To buttress her claim that DuFief lacks authority to determine that the colors of her home's features are not acceptable, the Respondent argues that she was treated differently from other residents in the community who had properties in violation of the Covenants.

The Panel rejects this argument based on the testimony and evidence in the record showing that DuFief notified many other property owners of violations concurrently with Dr. Sacchi. While the Respondent acknowledged that white features had been observed on other homes in the community, the testimony from the Respondent is convincing that the ARC did not *approve* requests to use white, and that it has diligently pursued owners of properties where white had been used to remove the white features, to re-emphasize the uniform color palette throughout the community.

The statement dated December 8, 2004 by James Henry, introduced into the record by the Respondent does not provide any facts which support the argument of selective enforcement of the covenants.

3. The Commission lacks the authority to retroactively approve the colors used on any property in the DuFief community.

The panel's jurisdiction extends only to the decision made by DuFief with regard to the color of the Respondent's windows, garage door, and entrance door. Without presentation of evidence on a property and the submission of a dispute to bring a property owner within the jurisdiction of the Commission, the Commission is not empowered to reach conclusions regarding notices of violations or conditions of any other properties in DuFief.

4. The enforcement of the covenants is not barred by the doctrines of laches or waiver.

The Respondent argued in her motion for summary judgment that DuFief's attempts to enforce the covenant violations are barred by the common law doctrine of laches. The principle of laches reflects society's concern that it is not fair to a party who commits a violation for the enforcing party to delay in taking enforcement action. The rationale for this is that the passage of time entitles the violating party to the expectation that no corrective action will be required. Laches embodies the idea that it may be more difficult or more expensive for a party to undo a violation after time has passed than if notified earlier. Laches also requires the violating party to show that the delay in enforcement substantially prejudices the violating party. See, e.g., *Greenfield v. Hechenbach*, 144 Md.App. 108, 142 (2002).

The Respondent has not demonstrated that she has been substantially prejudiced by the passage of time between her installation of the windows, garaged door, and entrance door and DuFief's enforcement action against her. The Complainant testified that it was unaware of the Respondent's actions until shortly before she was cited, resulting from the community's renewed efforts to establish the color palette. There has been no evidence that the Respondent would have been advantaged in the cost or convenience of correcting the violations at the time she installed them, as opposed to correcting the violations now.

The warranty for the windows does not conclusively indicate that painting the windows is not feasible. The Panel rejects the warranty requirements as the sole argument for the Respondent's claim that it is not feasible to correct the violations relating to the windows, because there was testimony that covering the windows was also a feasible alternative to painting. The manufacturer's instructions clearly lead to the conclusion that the doors can be successfully painted.

The Complainant's testimony indicates that its enforcement policy recognized the importance of diligently enforcing the covenants to assure that challenges on the basis of abandonment or waiver could be resisted. The Respondent did not demonstrate that the Complainant's enforcement actions over the years had resulted in changes in the DuFief community that rose to the level of abandonment articulated by the Maryland Court of Appeals in *Chevy Chase Village v. Jaggers, supra*.

5. An award of attorney's to the Respondent is not warranted.

The Panel recognizes that Dr. Sacchi has incurred inconvenience, distress, and \$15,449.00 in legal fees in connection with this dispute. As explained more fully above, the Panel has determined that the Complainant reasonably interpreted its covenants and is authorized to enforce its covenants. Therefore, this dispute cannot be characterized as frivolous or unwarranted. The parties themselves, through their choices of legal principles and strategies to emphasize, determined the course of the dispute and the effort required for pre-hearing conferences, discovery, motions, continuances, and hearings. The panel concludes that the dispute has been prosecuted vigorously and thoroughly by both parties, upon good faith belief in their arguments, and that none of the legal criteria for an award of attorneys fees, as specified in Chapter 10B of the Montgomery County Code, have been met.

ORDER

Based upon the evidence of record and for the reasons set forth above, it is this 29th day of March, 2006 by the Commission on Common Ownership Communities, ORDERED that:

1. The relief requested by the Complainant is granted.
2. Respondent is ordered to correct the violations related to the windows, garage door and front entrance at the Property as follows:

a. Respondent must submit an application to the Complainant within sixty days from the date of this Order, detailing the technique and colors she proposes to use to correct the violations, such technique and colors to be consistent with Complainant's architectural guidelines.

b. Upon approval of Respondent's application by Complainant, Respondent must, within ninety days after being notified that her application has been approved, correct the violations in accordance with the approved application.

3. All requests for an award of attorneys' fees and costs are denied.

Panel member Fleischer concurs in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Christopher Hitchens
Panel Chair
Commission on Common
Ownership Communities